

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

MAGNODE CORPORATION

Employer

and

Case 9-RD-1991

DOYLE ROBERTS, AN INDIVIDUAL

Petitioner

and

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS AND LOCAL LODGE 225

Union

MAGNODE CORPORATION

Employer/Petitioner

and

Case 9-RM-1032

HAWKEYE LOCAL LODGE 1312

Union

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing <sup>1/</sup> was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

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<sup>1/</sup> The entire record consists of the transcript and exhibits. The parties waived the filing of briefs.

Upon the entire record in this proceeding,<sup>2/</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3/</sup>

2. The Employer/Petitioner is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organizations involved claim to represent certain employees of the Employer/Petitioner.<sup>4/</sup>

4. The Employer/Petitioner, a corporation, is engaged in the manufacture of aluminum extrusions at its Trenton, Ohio facility where it employs approximately 136 to 140 employees in the unit found appropriate. The Employer/Petitioner and Local Lodge 1312 have had an exclusive collective-bargaining relationship since, at least, 1962 as evidenced by successive

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<sup>2/</sup> The hearing is an expedited proceeding under the rationale of *Kingsport Press*, 146 NLRB 1111 (1964) as it involves possibly disenfranchising a substantial number of economic strikers.

<sup>3/</sup> I note that the Employer/Petitioner filed an interim appeal of the hearing officer's ruling declining, inter alia, to permit evidence to be introduced concerning the alleged merger by the International of Local Lodge 1312 into Local Lodge 225. I denied the Employer/Petitioner's interim appeal based on my conclusion that the petitions do not present a merger issue. Rather, the issue is whether the petitions raise a question concerning representation. In this connection, I concluded, contrary to the Employer/Petitioner's contentions, that neither the International nor Local Lodge 225 needs to present an independent showing of interest as neither labor organization filed a petition. I noted further that the petition filed by the Employer/Petitioner, which involves the International and indirectly Local Lodge 225, is based on the demand by the International that the Employer sign a contract. I concluded that this demand is sufficient "objective considerations" to support the RM petition. *United States Gypsum Co.*, 157 NLRB 652 (1966). Further, the decertification petition involving Local Lodge 1312 was filed at a time when it purported to represent the bargaining unit. Thus, I noted in denying the Employer/Petitioner's interim appeal, that the petitions raise a question concerning representation as to which, if any, of the purported labor organizations represent a majority of the Employer/Petitioner's employees.

<sup>4/</sup> The International and Local Lodge 225 contend that Local Lodge 1312 is not a labor organization within the meaning of Section 2(5) of the Act as a result of the purported merger by the International of Local Lodge 1312 into Local Lodge 225. With regard to this contention, I note that the record reflects that Local Lodge 1312 exists for the purpose in whole or in part of dealing with employers concerning wages, hours, and other terms and conditions of employment. The record further reflects that Local Lodge 1312 continues to hold regular meetings, employees continue to participate in Local Lodge 1312, and it asserts that it would be willing to represent the employees in the unit if it were successful in the representation election. Based on the record evidence, I find that Local Lodge 1312 is a labor organization within the meaning of Section 2(5) of the Act. See, e.g., *Litton Business Systems*, 199 NLRB 354 (1972). The fact that Local Lodge 1312 may have changed its name (Hawkeye Local Lodge 1312) and undergone an attempted merger is not relevant in concluding that it is a statutory labor organization. *East Dayton Tool Co.*, 194 NLRB 266 (1972).

contracts, the most recent of which was effective by its terms from February 26, 1996 through February 24, 2001. The parties stipulated, and I find, that the unit set forth below, which is contained in the most recent agreement, is the recognized unit and is an appropriate unit for collective bargaining:

All production and maintenance employees at the Employer/Petitioner's plant in Trenton, Ohio, but excluding all employees in the office, all salaried employees not directly connected with production and maintenance, office clerical employees, part time employees not regularly scheduled, professional employees, guards, foremen, and all other supervisors as defined in the National Labor Relations Act, as amended.

The Employer/Petitioner and Local Lodge 1312 have engaged in extensive bargaining for a successor contract for the one which expired on February 24, 2001, but have been unable to reach an agreement. The parties stipulated that on February 25, 2001, certain employees of the Employer/Petitioner in the bargaining unit described above commenced a strike.

The Petitioner in Case 9-RD-1991, Doyle Roberts, an individual, asserts that (Hawkeye) Local Lodge 1312 is no longer the majority representative of the unit employees. The Employer/Petitioner contends that many of the "former economic strikers" are ineligible to vote because they have retired or because they have notified it that they have quit their employment. Additionally, the Employer apparently contends that other strikers may be ineligible to vote because they never made unconditional offers to return to work following the International's notification to the Employer/Petitioner of the cessation of the strike.<sup>5/</sup> Finally, the International and Local 225 contend that there is a contract bar to an election in this case because on November 9, 2001, the International accepted the Employer/Petitioner's then outstanding contract offer.<sup>6/</sup>

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<sup>5/</sup> At the hearing, the Employer/Petitioner also filed an interim appeal of the hearing officer's ruling declining to permit evidence to be introduced as to whether the strike that began on February 25, 2001, was terminated on November 9, 2001, thereby, arguably impacting the eligibility to vote by former economic strikers who have not made an offer to return to work. In denying this aspect of the Employer/Petitioner's interim appeal, I noted that the question of whether a strike is continuing and the eligibility issues impacted by the resolution of that question need not be resolved in a post-election proceeding. See, *L.E.M., Inc.*, 198 NLRB 694 (1972). I further note that the Board has held that the issue of striker eligibility is best left to a post-election proceeding. *Mariah, Inc.*, 322 NLRB 586 fn. 1 (1996).

<sup>6/</sup> In connection with this issue I note that the International filed an unfair labor practice charge over the Employer/Petitioner's refusal to sign a proposed agreement after a representative of the International signed the Employer/Petitioner's final proposal. I hereby take administrative notice of my dismissal of that charge on January 31, 2002, and I am satisfied for purposes of this proceeding that there is no contract bar. Indeed, the representative for the International and Local Lodge 225 conceded at the hearing that there is no current agreement that has been signed by any representative of the Employer/Petitioner. Thus, the purported contract signed by the International does not constitute a bar to an election. To constitute a bar a contract must be a "collective" agreement signed by all parties. *J.P. Sand & Gravel Co.*, 222 NLRB 83 (1976); *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). Accordingly, I find that the petitions raise a valid question concerning representation of the Employer/Petitioner's employees.

With regard to the issue of the eligibility of striking employees, I find that the Employer/Petitioner has raised some evidence, although not conclusive, with respect to the reasonable expectancy of continued employment, and, therefore, the voting eligibility, of striking employees who have purportedly resigned their employment or retired from the Employer/Petitioner's employ. However, the record evidence is not sufficient to enable me to make a ruling on their eligibility, which the Board traditionally leaves to post-election proceedings. *Mariah, Inc.*, supra. Accordingly, as a question has been raised regarding the eligibility of the following employees, I shall instruct my agent to challenge the ballots of the following employees if they appear at the polls to vote: Charles Crouch, Donald Carder, Winfred Huff, Dannie Ledford, Marvin Snyder, Charles Day, Woodrow Wilson, Billy Holbrook, William Elam, Clyde Sharrett, Charles Combs, Garland Garrett, Willis Brewer, George Lee, Anthony Stafford, Richard Kirby, Greg Dougherty, Doug Hazelwood, David Napier, Roy Smith, Charles Osborne, Ron Rose, Steve Logan, Bobby Pergram, Herman Metcalf, Danny Haney, Gerald Truster, Robert Loftus, Thomas Howard, Terry Flack, Dave Hounshell, Larry Spicer, Mike Day, John Tusing, Kenneth Lairson, Keith Shannoon, Kevin Fassler, Wade Cathers, Charles Hampton, Ralph Blanton, Ray Hartmann, and Carl McIntosh.

With regard to the other issues raised in the record, they have been affirmatively disposed of by my denial of the Employer/Petitioner's interim appeal and I adhere to my previous conclusions as to those issues.

Accordingly, I shall direct an election under the time limitations contemplated in *Kingsport Press* among the employees in the following unit to determine whether they desire to be represented for the purposes of collective bargaining by either of the labor organizations involved herein:

**All production and maintenance employees at the Employer/Petitioner's plant in Trenton, Ohio, but excluding all employees in the office, all salaried employees not directly connected with production and maintenance, office clerical employees, part time employees not regularly scheduled, professional employees, guards, foremen, and all other supervisors as defined in the National Labor Relations Act, as amended.**

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Section 103.20 of the Board's Rules and Regulations requires that the Employer shall post copies of the Board's official notice of election in conspicuous places at least three full working days prior to 12:01 a.m. on the day of the election. The term "working day" shall mean an entire 24 hour period excluding Saturdays, Sundays and holidays. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months

before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Association of Machinists and Aerospace Workers and Local Lodge 225 or Hawkeye Local Lodge 1312 or by neither.**

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **February 15, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 22, 2002**.

Dated at Cincinnati, Ohio this 8th day of February 2002.

/s/ Richard L. Ahearn, Regional Director  
Richard L. Ahearn, Regional Director  
Region 9, National Labor Relations Board  
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